



This document is scheduled to be published in the Federal Register on 02/26/2020 and available online at [federalregister.gov/d/2020-03841](https://federalregister.gov/d/2020-03841), and on [govinfo.gov](https://govinfo.gov)

## Billing Code 3410-05-P

### DEPARTMENT OF AGRICULTURE

#### Commodity Credit Corporation

#### 7 CFR 1416

[Docket No. FSA-2019-0011]

RIN 0560-AI50

#### Supplemental Agricultural Disaster Assistance Programs

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agriculture Improvement Act of 2018 (2018 Farm Bill) amends the Agricultural Act of 2014 to make changes to the Supplemental Agricultural Disaster Assistance Programs, which include the Livestock Indemnity Program (LIP), the Livestock Forage Disaster Program (LFP), the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), and the Tree Assistance Program (TAP). The rule includes changes required by the 2018 Farm Bill, as well as discretionary changes intended to improve administration of the programs and clarify existing program requirements.

**DATES:** Effective: [Insert date of publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION, CONTACT:** Kimberly Graham; telephone (202) 720-7641, or email [kimberly.graham@usda.gov](mailto:kimberly.graham@usda.gov). Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The disaster assistance programs, payment limitations, and payment eligibility provisions in this rule are Commodity Credit Corporation (CCC) funded and are administered by the Farm Service Agency (FSA). This final rule implements specific changes to the programs required by the 2018 Farm Bill (Pub. L. 115-334). This rule also makes minor clarifying amendments and corrections to the regulations in 7 CFR part 1416.

### **Payment Limitation**

The 2018 Farm Bill removed ELAP from the combined \$125,000 per year payment limitation with LFP, effectively removing the annual payment limitation for ELAP. LIP has no annual payment limitation as well because of changes made by the Bipartisan Budget Act of 2018 (Pub. L. 115-123). Accordingly, LFP is the only supplemental disaster program to have a \$125,000 per person and legal entity program year payment limitation. However, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, continue to apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an AGI that exceeds \$900,000 will not be eligible to receive benefits under 7 CFR part 1416. Further, the direct attribution provisions in 7 CFR part 1400 apply to ELAP, LFP, LIP, and TAP.

As required by the 2018 Farm Bill, effective with the 2019 and subsequent program years, direct or indirect payments to a person or legal entity under the LFP are

limited to \$125,000 per program year. The limitation does not apply to payments issued under ELAP, LIP, and TAP.

## **General Provisions**

The 2018 Farm Bill amends the definition of “eligible producer on a farm” to include an Indian Tribe or Tribal organization. This rule amends the definition in the regulation. Additionally, miscellaneous provisions are being amended to specify that in order to be eligible for benefits, participants must submit an accurate acreage report annually as required by applicable program provisions.

## **ELAP**

ELAP provides financial assistance to eligible producers of livestock, honeybees, and farm-raised fish for losses due to disease, certain adverse weather events, or loss conditions, including blizzards and wildfires, as determined by the Secretary. ELAP assistance is provided for losses that are not covered by LFP and LIP.

For ELAP, this rule makes mandatory changes to conform with the 2018 Farm Bill to:

- Provide that a veteran farmer or rancher’s payment will be calculated based on a national payment rate of 90 percent;
- Add assistance for costs related to inspection for cattle tick fever, regardless of findings from the inspection;
- Remove assistance for livestock death losses due to disease transmitted by vectors that cannot be controlled by vaccination or acceptable management practices, as the 2018 Farm Bill authorizes payments for these losses under LIP; and

- Provide that ELAP payments, beginning with the 2019 program year, are not subject to an annual program payment limitation.

In addition, FSA is making discretionary changes to ELAP for clarity and to improve program integrity. The definition of “eligible winter storm” is amended to be consistent with how this term is used for LIP. In order to be consistent with the LFP and ELAP provisions in § 1416.104 and § 1416.105, the definition of “livestock owner” is amended to specify that an owner must have legal ownership of the livestock for which ELAP benefits are being requested during the 60 calendar days before the eligible adverse weather or eligible loss condition as opposed to only or just on the day of the eligible adverse weather or eligible loss condition. The definition of “grazing animal” is amended to clarify that unweaned livestock are not included in the definition. The program year for ELAP has always run as a fiscal year while the other disaster programs LFP, LIP and TAP had program years that were based on the calendar year. This rule amends the 2019 and subsequent program years for ELAP; for 2019 the ELAP program year is from October 1, 2018, through December 31, 2019; for 2020 and subsequent years, the ELAP program year is the same as the calendar year, January 1 through December 31. This is for ease in program administration and for producers to better understand the program year for ELAP consistent with other similar disaster assistance programs. The change should not impact the extent of any producer’s payment eligibility.

This rule amends § 1416.103 to include costs for transporting water for eligible adverse weather, as determined by the Deputy Administrator. Previously, only drought was an eligible condition for costs for transporting water. This change is being made to

address the actual loss sustained by producers when an eligible disaster (not just drought) causes a loss for transport of water (water transportation costs that absent that disaster would not have been incurred by the eligible producer). As was the case for drought, the cost of water is not eligible. The program will not pay for transporting water to livestock on land enrolled in CRP.

This rule amends § 1416.104 to remove the eligibility requirement for contract growers that their income be dependent on survival of the livestock, which was sometimes being interpreted to require a contract grower to indemnify owners for livestock deaths. Contract growers have beneficial risk interest in livestock when their compensation is based on their inputs, which are subject to loss and performance of the livestock as specified in the contract grower's contract. While some contracts may make the contract grower liable for death of livestock, such a condition is not required in order for a contract grower to be able to show beneficial risk interest in the livestock. The intent is to specify that eligibility of contract growers is for those persons or legal entities who do not own the livestock, but who derive income from weight gain of livestock, production of livestock products, or number of livestock produced. This rule also removes a provision that eligible livestock must not have been in a feedlot on the beginning date of the eligible adverse weather or loss condition to be eligible under ELAP as the location of an owner's livestock on the beginning date of an eligible disaster is not relevant to whether an eligible loss has occurred for an owner's grazing animals.

For program integrity, this rule specifies that a notice of loss for honeybee colony or honeybee hive losses must be accompanied by acceptable documentation to FSA that

demonstrates that an eligible loss occurred and was associated with an eligible loss condition.

This rule removes regulatory provisions that applied only to ELAP for prior program years.

Further, consistent with the 15-day notice of loss period that applies to producers of honey under the Noninsured Crop Disaster Assistance Program, for honeybee losses the rule amends the notice of loss deadline for 2020 and subsequent program years to 15 days of when the loss is first apparent to the producer. For losses other than honeybee and honeybee hive losses, the notice of loss deadline remains at 30 days from the date loss is first apparent to the producer. This rule specifies that, in addition to all other existing eligibility requirements, that in the event a participant was paid for a loss of honeybee colony or honeybee hive in either or both of the previous 2 years, the participant must provide, along with any notice of loss and application for payment in the current year, documentation acceptable to FSA substantiating beginning inventory for that current year for which the notice of loss and application for payment is being submitted. The rule specifies that, in addition to all other existing eligibility requirements, for honeybee colony losses due to Colony Collapse Disorder (CCD), the participant must provide a producer certification that the loss was a direct result of at least 3 of the 5 symptoms of CCD. Further, in addition to the notice of loss required by § 1416.107, this rule clarifies that an application for payment is due within 30 calendar days of the end of the applicable program year. This is not a change; however, with the change in program years, the regulation is amended to tie the application deadline to the program year.

## **LFP**

Other than the change made to payment limitations that removed ELAP from the combined \$125,000 annual payment limit with LFP therefore making LFP the only supplemental disaster program subject to the \$125,000 limit, the 2018 Farm Bill did not make changes to the LFP. However, consistent with other discretionary changes for clarity and program integrity, FSA is making the following changes in this rule.

This rule clarifies § 1416.201 to specify that eligible livestock owners or contract growers of livestock who are eligible producers of grazed forage crop acreage are eligible for LFP payment consideration. Persons or legal entities that are not both an eligible owner or contract grower of livestock and a producer of grazed forage are not eligible. This is not a change to existing policy, rather a clarification. This rule amends the definition of “contract grower” to remove the requirement that the contract grower’s income be dependent on survival of the livestock, consistent with the intent of the program as well as with the ELAP provision covering contract growers. This rule amends the definition of “grazing animals” to make clear that unweaned animals are excluded (consistent with ELAP) from this definition and therefore ineligible for payment. This rule adds a definition for “unweaned livestock”.

This rule amends § 1416.203 to clarify that as of the date of the qualifying drought or fire for LFP, the owner or contract grower of grazing animals must provide pastureland or grazing land for covered livestock that is physically located in a county affected by a qualifying drought during the normal grazing period for the specific forage crop acreage in the county. This is not a change in policy, but rather a clarification in the regulatory text. Further, consistent with ELAP, this rule clarifies that livestock excluded

from being eligible include livestock intended for consumption by the owner or contract grower. This rule also clarifies provisions in § 1416.205 regarding grazing losses on irrigated land, which are not eligible for payment under LFP unless they are due to a lack of surface water as a result of a qualifying eligible drought condition. Finally, consistent with amendments to other subparts of part 1416, this rule removes provisions that were applicable to only prior program years.

## **LIP**

LIP provides benefits to livestock owners and contract growers for livestock deaths in excess of normal mortality or injured livestock sold at a reduced price caused by adverse weather or by attacks by animals reintroduced into the wild by the Federal Government. LIP payments are equal to 75 percent of the average fair market value of the livestock. There is no payment limitation for LIP. The 2018 Farm Bill amends LIP to include coverage for:

1. Death loss resulting from diseases caused by, or transmitted by, a vector that cannot be controlled by vaccination or acceptable management practices; and
2. Death of unweaned livestock due to extreme cold and without regard to management protocols.

FSA is amending the regulations to conform to the mandatory changes under the 2018 Farm Bill changes to:

- Amend eligible livestock losses to include death loss of unweaned livestock due to extreme cold, without regard to management practices, vaccination protocols, or lack of vaccinations by the eligible producer; and

- Amend the definition of “eligible disease” to include disease caused or transmitted by a vector and not be susceptible to control by vaccination or acceptable management practices (this was previously an eligible loss under ELAP; it will now be covered under LIP together with any other eligible death loss of eligible livestock). With these amendments, compensation for eligible livestock deaths will only be under LIP.

In addition, this rule makes minor discretionary changes to LIP to improve program integrity. FSA is amending § 1416.302 to remove references to “open range” livestock. The term was previously used where the rule allowed for establishment of beginning inventory of calf and lamb operations based on livestock beginning inventory history (LBIH). The regulation will retain LBIH and its use will be applicable in any livestock operation, not only those that were referred to as “open range,” for establishment of beginning inventory of unweaned livestock of calves, kids, or lambs. Accordingly, corresponding amendments are being made throughout the subpart to remove references to open range and to replace the reference to calves and lambs with unweaned livestock. This rule also amends § 1416.304, where applicable, by replacing the words “adverse weather event or date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators or the transmission by vectors and is not susceptible to control by vaccination or acceptable management practices” with “eligible loss condition,” for ease in reading. This rule amends § 1416.304 to clarify that that eligible livestock includes only those livestock produced and maintained for commercial use for sale of the production of livestock products such as milk or eggs (or livestock). Excluded livestock are the same

before including, but not limited to, wild free roaming animals; animals produced or maintained for consumption by the owner or contract grower; livestock used for recreational purposes; and livestock used for pleasure, hunting, roping, pets, or for show.

As is the case for other subparts, this rule amends § 1416.305 to remove provisions that were only applicable to prior program years. However, to relieve the burden some livestock owners may have in qualifying for assistance, § 1416.305 is amended to permit, for losses sustained due to an eligible adverse weather event or eligible disease, as defined in the rule, that the participant must, at a minimum, provide reliable records of inventory and reliable records as proof of death or injury. Finally, consistent with other amendments to 7 CFR part 1416, provisions in § 1416.305 that were applicable only to prior program years (for example, on or after October 1, 2011, and before January 1, 2015) have been removed.

## **TAP**

TAP assists eligible orchardists and nursery tree growers that have incurred tree, bush, or vine mortality losses in excess of 15 percent, adjusted for normal mortality, due to natural disaster. TAP is a cost-reimbursement program, which means that payments are calculated based on estimated actual costs to replace or rehabilitate lost or damaged trees, bushes, or vines. The replacement and rehabilitation activities must take place within 12 months after the application is approved, and payment is not made until the activities are completed.

The rule amends § 1416.402 to add the term “commercially viable” for those eligible trees, bushes, or vines, that are damaged but which may rejuvenate and return to a level of expected production through rehabilitation and without planting. The term is

added to § 1416.403 to permit eligible trees, bushes, or vines that are determined not commercially viable to be included in order to meet the requisite mortality in § 1416.403(a). This rule also amends the definition of “natural disaster” to specify the included natural occurrences must be extreme, abnormal, and damaging, consistent with the intent of the program.

This rule amends § 1416.405 to remove provisions that applied only to prior program years. It amends § 1416.406 to implement a change required by the 2018 Farm Bill to increase the reimbursement amount for a beginning farmer and rancher and a veteran farmer and rancher from 65 percent to 75 percent for the cost of replanting trees, bushes, or vines lost due to a natural disaster, in excess of 15 percent mortality (adjusted for normal mortality) or, at the option of the Secretary, sufficient seedlings to reestablish a stand. The 2018 Farm Bill also increases the reimbursement amount for beginning farmers and ranchers and veteran farmers and ranchers from 50 percent to 75 percent of the cost of pruning, removal, and other costs incurred for salvaging the existing plants, or in the case of plant mortality, to prepare land for replanting, subject to the maximum allowable FSA rate.

**Effective Date, Notice and Comment, and Paperwork Reduction Act.**

The Administrative Procedure Act (5 U.S.C.553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs Supplemental Agricultural Disaster Assistance Programs, which include ELAP, LIP, LFP, and TAP for benefit payments and thus falls within that exemption.

Further, as specified in 7 U.S.C. 9091, the regulations to implement the provisions of the Title I of the 2018 Farm Bill are:

- Exempt from the notice and comment provisions of 5 U.S.C. 553, and
- Exempt from the Paperwork Reduction Act (44 U.S.C. chapter 35).
- To use the authority in 5 U.S.C. 808 related to Congressional review and

any potential delay in the effective date.

In addition, 7 U.S.C. 9091(c)(3) directs the Secretary to use the authority provided in 5 U.S.C. 808, which provides that when an agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, that the rule may take effect at such time as the agency determines. Due to the mandatory requirements of the 2018 Farm Bill and the need to implement the regulations expeditiously to provide assistance to producers who suffered disaster losses because of adverse weather and other natural disasters, FSA and CCC find that notice and public procedure are contrary to the public interest.

The Office of Management and Budget (OMB) designated this rule as not major under Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Accordingly, this rule is effective upon publication in the *Federal Register*.

#### **Executive Orders 12866, 13563, 13771, and 13777**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to

select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Order 12866 and 13563 for the analysis of costs and benefits apply to rule that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

OMB designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 and 13563.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FSA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

## **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 , generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because as noted above, this rule is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

## **Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). Some of the changes being made by the rule were self-enacting and have already been implemented administratively. The rule implements primarily changes required by the 2018 Farm bills for ELAP, LIP and TAP; and the discretionary aspects are to improve administration of the programs and clarify existing program requirements. FSA is providing the disaster assistances, payment limitations, and payment eligibility provisions under the LIP, LFP, ELAP, and TAP to the eligible producers. The discretionary provision would not alter any environmental impacts resulting from implementing the mandatory changes to those programs. Accordingly, these discretionary aspects are coved by the following Categorical Exclusion, found at 7 CFR

part 799.31(b)(6)(vi) safety net programs administrated by FSA and no Extraordinary Circumstances (§ 799.33) exist. Therefore, as this rule presents only discretionary clarifications of mandatory requirements that will not have an impact to the human environments, individually or cumulatively, FSA will not prepare an environmental assessment or environmental impact statement for this rule; this rule serves as documentation of the programmatic environmental compliance decision for this federal action.

### **Executive Order 12372**

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

## **Executive Order 13132**

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

## **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that required Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of American Indian, in Washington, DC. The portion of the Tribal Consultation relative to this rule was conducted by Bill Northey, USDA Under Secretary for the Farm Production and Conservation mission area,

as part of Title I session. If a Tribe requests additional consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided.

### **Unfunded Mandates**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **Federal Assistance Programs**

The titles and numbers of the Federal assistance programs, listed in the Catalog of Federal Domestic Assistance, to which this rule applies, are:

10.088—Livestock Indemnity Program

10.089—Livestock Forage Disaster Program

10.091—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish  
Program

10.092—Tree Assistance Program

## **E-Government Act Compliance**

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### **List of Subjects in 7 CFR Part 1416**

Administrative practice and procedure, Agriculture, Disaster assistance, Fruits, Livestock, Nursery stock, Seafood.

For the reasons discussed above, CCC amends 7 CFR part 1416 as follows:

## **PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS**

1. The authority citation for part 1416 continues to read as follows:

Authority: Title I, Pub. L. 113-79, 128 Stat. 649; Title I, Pub. L. 115-123; Title VII, Pub. L. 115-141.

### **Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs**

#### **§ 1416.2 [Amended]**

2. Amend § 1416.2, in paragraph (a), by removing the words “will be” and adding the word “is” in their place, and in paragraph (f), by adding a comma after the word “year” the first time it appears in the second sentence.

3. Amend § 1416.3 as follows:

- a. In paragraph (b)(3), remove the word “or”;

b. In paragraph (b)(4), remove the period and add “; or” at the end of the paragraph; and

c. Add paragraph (b)(5).

The addition reads as follows:

**§ 1416.3 Eligible producer.**

\* \* \* \*

(b) \* \* \*

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

4. Amend § 1416.6 as follows:

a. Revise paragraph (a); and

b. In paragraph (c), in the first sentence, remove the words “For losses incurred beginning on October 1, 2011, and for” add the word “For” in their place, and in the last sentence, remove the words “average AGI” and add “AGI” in their place.

The revision reads as follows:

**§ 1416.6 Payment eligibility and limitation.**

(a) For 2019 and each subsequent program year, a person, legal entity, or member of a joint venture or general partnership, as determined in part 1400 of this chapter, cannot receive, directly or indirectly, more than \$125,000 per program year under LFP.

\* \* \* \*

**§ 1416.7 [Amended]**

5. Amend § 1416.7, in paragraph (a), by removing the word “deliberately”.

6. Amend § 1416.14 by adding paragraph (b) to read as follows.

**§ 1416.14 Miscellaneous.**

\* \* \* \*

(b) In order to be eligible for benefits, participants in the programs specified in this part must submit an accurate acreage report annually as required by these provisions.

**Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program**

7. Amend § 1416.102 as follows:

- a. In the definition of “Eligible adverse weather”, add the word “eligible” before the word “winter”;
- b. Revise the definition of “Eligible winter storm”;
- c. In the definition of “Equine animal”, add the word “weaned” before the word “domesticated”;
- d. In the definition of “Goat”, add the word “weaned” before the word “domesticated” and remove the second sentence;
- e. In the definition of “Grazing animals”, remove the words “livestock that” and add the words “weaned livestock that” in their place and add a sentence to the end of the definition;
- f. In the definition of “Livestock owner”, remove the words “on the day of” and add the words “during the 60 calendar days before” in their place.
- g. Revise the definitions of “Non-adult beef cattle”, “Non-adult beefalo”, “Non-adult buffalo or bison”, and “Non-adult dairy cattle”;

- h. In the definition of “Normal mortality”, remove the words “livestock,” and “livestock and”;
- i. Remove the definition of “Poultry”;
- j. Revise the definition of “Program year”;
- k. In the definition of “Sheep”, add the word “weaned” before the word “domesticated” and remove the second sentence;
- l. Remove the definition of “Swine”; and
- m. Add in alphabetical order a definition for “Unweaned livestock”; and
- n. In the definition of “Verifiable record”, remove the words “and is used to substantiate the claimed loss”.

The revisions and additions read as follows:

#### **§ 1416.102 Definitions.**

\* \* \* \*

*Eligible winter storm* means an event that is so severe as to directly cause loss and lasts in duration for at least 3 consecutive days and includes a combination of high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures. The wind, precipitation, and extremely cold temperatures must occur during the consecutive 3-day period, with wind and extremely cold temperatures occurring in each of the 3 days.

\* \* \* \*

*Grazing animals* \* \* \* Unweaned livestock are not grazing animals regardless of whether those unweaned livestock are present on grazing land or pastureland.

\* \* \* \*

*Non-adult beef cattle* means a weaned beef breed bovine animal that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult beef cow or bull.

*Non-adult beefalo* means a weaned hybrid of beef and bison that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult beefalo cow or bull.

*Non-adult buffalo or bison* means a weaned animal of those breeds that on or before the beginning date of the eligible adverse weather or loss condition does not meet the definition of adult buffalo or adult bison cow or bull.

*Non-adult dairy cattle* means a weaned bovine animal of a breed used for the purpose of providing milk for human consumption that on or before the beginning date of the eligible adverse weather or eligible loss condition does not meet the definition of adult dairy cow or bull.

\* \* \* \*

*Program year* means for 2019 from October 1, 2018, through December 31, 2019; for 2020 and subsequent years, the program year is the same as the calendar year, January 1 through December 31.

\* \* \* \*

*Unweaned livestock* means an animal not weaned from mother's milk or milk replacement to other nourishment. For ELAP purposes, unweaned livestock does not include turkeys, ducks, chickens, and geese.

\* \* \* \*

8. Amend § 1416.103 as follows:

- a. Revise paragraphs (d)(5) introductory text and (d)(5)(i) and (ii);
- b. In paragraph (d)(5)(iii), remove the words “grazing land” and add the word “livestock” in their place;
- c. Revise paragraph (f);
- d. Remove paragraph (g);
- e. Redesignate paragraphs (h) through (j) as paragraphs (g) through (i), respectively; and
- f. Revise newly redesignated paragraph (h).

The revisions read as follows:

**§ 1416.103 Eligible losses, adverse weather, and other loss conditions.**

\* \* \* \*

(d) \* \*

(5) A loss resulting from the additional cost of transporting water to eligible livestock as specified in § 1416.104(a) due to eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. Transporting water to livestock located on land enrolled in CRP is not an eligible loss under ELAP. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be on eligible grazing lands that meet all of the following:

(i) Physically located in the county where the eligible adverse weather, eligible loss condition, or eligible drought, as determined by the Deputy Administrator, occurred;

(ii) That had adequate livestock watering systems or facilities before the eligible adverse weather, eligible loss condition, or eligible drought occurred; and

\* \* \* \*

(f) For a loss resulting from the additional cost associated with gathering livestock to inspect or treat for cattle tick fever, the livestock gathered for inspection or treatment for cattle tick fever must be considered eligible livestock as specified in § 1416.104(d). To be considered an eligible loss, acceptable records, as determined by the Deputy Administrator, must be on file with APHIS, that provide the number of livestock gathered and inspected or treated for cattle tick fever and the number of treatments given during the program year.

\* \* \* \*

(h) For honeybee colony or honeybee hive losses to be considered eligible, the hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, colony collapse disorder, earthquake, eligible winter storm, as specified in § 1416.102, excessive wind, flood, hurricane, lightning, tornado, volcanic eruption, and wildfire. Drought is not an eligible adverse weather event or eligible loss condition for honeybee hive losses. To be considered eligible for honeybee hive loss as of the beginning date of the eligible adverse weather event or eligible loss condition the honeybee hive must be all the following: maintained for producing honey, pollinating, or breeding honeybees for commercial use in a farming operation; physically located in the county where the eligible adverse weather or eligible

loss conditions occurred; and be a part of a honeybee farming operation in which the applicant has a risk in honey production, pollination, or honeybee breeding. To be considered an eligible honeybee colony loss, the colony loss must be in excess of normal mortality, as established by the Deputy Administrator, and the loss could not have been prevented through reasonable and available measures. The notice of loss must be accompanied by acceptable documentation, as determined by the Deputy Administrator, that demonstrates an eligible loss occurred and was associated with an eligible adverse weather or eligible loss condition, and that generally accepted husbandry and production practices had been followed. For colony collapse disorder, acceptable documentation includes, but is not limited to, proof of beginning inventory and good management practices, and a producer certification that the loss of honeybee colonies was a direct result of at least 3 of the following 5 symptoms:

- (1) The loss of live queen or drone bee populations inside the hives;
- (2) Rapid decline of adult worker bee population outside the hives, leaving brood poorly or completely unattended;
- (3) Absence of dead adult bees inside the hive and outside the entrance of the hive;
- (4) Absence of robbing collapsed colonies;
- (5) At the time of collapse, varroa mite and Nosema populations are not at levels known to cause economic injury or population decline.

\* \* \* \*

#### **§ 1416.104 [Amended]**

9. Amend § 1416.104 as follows:

- a. In paragraph (a)(3), add the word “and” at the end of the paragraph;
- b. In paragraph (a)(4); remove the semicolon and add a period in its place;
- c. Remove paragraph (a)(5);
- d. In paragraph (c)(7), add the word “unweaned” before the word “beef”;
- e. Remove paragraphs (d), (e)(1) and (2), and (f);
- f. Redesignate paragraphs (e), (g), and (h) as paragraphs (d), (e), and (f), respectively; and
- g. In newly redesignated paragraph (d), remove the words “the survival of the livestock and” and the phrase “For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:”.

**§ 1416.105 [Amended]**

- 10. Amend § 1416.105 by removing paragraph (c) and redesignating paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

**§ 1416.106 [Amended]**

- 11. Amend § 1416.106 as follows:
  - a. Revise paragraph (a) introductory text;
  - b. In paragraph (a)(2)(i), remove the words “feed, grazing, and death” and add the words “feed and grazing” in their place;
  - c. In paragraph (a)(7), remove the words “resource and beginning” and add the words “resource, beginning, or veteran” in their place;
  - d. In paragraph (b) introductory text, remove the words “For 2017 and subsequent program years, for” and add the word “For” in its place;
  - e. In paragraph (d), add a new third sentence;

- f. Remove paragraph (e); and
- g. Redesignate paragraph (f) as paragraph (e).

The revision and addition read as follows:

**§ 1416.106 Notice of loss and application process.**

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA county office, the following:

\* \* \* \*

(d) \* \* \* If the participant was paid for a loss of honeybee colony or honeybee hive in either or both of the 2 previous years, the participant must provide documentation that FSA deems acceptable to substantiate how current year honeybee colony and honeybee hive inventory was acquired. \* \* \*

\* \* \* \*

12. Revise § 1416.107 to read as follows:

**§ 1416.107 Notice of loss and application period.**

(a) In addition to submitting an application for payment by the deadline in paragraph (b) of this section, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

- (1) For losses other than honeybees, provide a notice of loss to FSA within 30 calendar days of when the loss of livestock is first apparent;
- (2) For honeybee losses, provide a notice of loss together with documentation required by § 1416.103 to FSA within 15 calendar days of when the loss is first apparent;
- (3) Submit the notice of loss required in this paragraph to the FSA county office.

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant seeking payment must also submit a completed application for payment by 30 calendar days after the end of the applicable program year.

**§ 1416.109 [Amended]**

13. Amend § 1416.109 as follows:

- a. In paragraph (a), remove the word “socially” and add the words “veteran farmer or rancher, socially ”in its place; and
- b. In paragraph (c), remove the references “§§ 1416.110(n), 1416.111(b)” and add the reference “§§ 1416.111(b)” in its place.

**§ 1416.110 [Amended]**

14. Amend § 1416.110 as follows:

- a. In paragraph (b) introductory text, add the words “eligible adverse weather, eligible loss condition, or” before the words “eligible drought”;
- b. In paragraph (f) introductory text, add the words “or inspect” after the word “treat”, and add the words “or inspection” after the word “treatment” both times it appears;
- c. In paragraph (f)(2), add the words “or inspected” after the word “treated”;
- d. Remove paragraph (n); and
- e. Redesignate paragraph (o) as paragraph (n).

**Subpart C—Livestock Forage Disaster Program**

15. Amend § 1416.201 by revising paragraph (b) to read as follows:

**§ 1416.201 Applicability.**

\* \* \* \*

(b) Eligible livestock owners or contract growers who are eligible producers of eligible grazed forage crop acreage will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs in the calendar year for which benefits are being requested.

16. Amend § 1416.202 as follows:

- a. In the definition of “Contract grower”, remove the words “the survival of the livestock and”;
- b. In the definition of “Equine animal”, add the word “weaned” before the word “domesticated”;
- c. In the definition of “Goat”, add the word “weaned” before the word “domesticated”;
- d. In the definition of “Grazing animals”, add the word “weaned” before the work “livestock” in the first sentence, and add a sentence to the end of the definition;
- e. In the definition of “Non-adult beef cattle”, add the word “weaned” before the word “beef” and remove the words “weighed 500 pounds or more” and remove the words “but that”;
- f. In the definition of “Non-adult beefalo”:
  - i. Add the word “weaned” before the word “hybrid”;
  - ii. Remove the words “weighed 500 pounds or more”; and
  - iii. Remove the words “fire, but” and add the word “fire” in their place;
- g. In the definition of “Non-adult buffalo or bison”, remove the word “an” and add the words “a weaned” in its place and remove the words “weighed 500 pounds or more” and “, but”;

- h. In the definition of “Non-adult dairy cattle”;
  - i. Add the word “weaned” before the word “bovine”;
  - ii. Remove the words “weighed 500 pounds or more”; and
  - iii. Remove the words “fire, but that” and add the word “fire” in their place;
  - i. Remove the definition of “Poultry”;
  - j. In the definition of “Sheep”, add the word “weaned” before the word “domesticated”;
  - k. Remove the definition of “Swine”; and
  - l. Add in alphabetical order a definition for “Unweaned livestock”.

The additions read as follows:

#### **§ 1416.202 Definitions.**

\* \* \* \*

*Grazing animals* \* \* \* Unweaned livestock are excluded as grazing animals regardless of whether those unweaned livestock are present on grazing land or pastureland.

\* \* \* \*

*Unweaned livestock* means an animal not weaned from mother’s milk or milk replacement to other nourishment.

\* \* \* \*

#### **§ 1416.203 [Amended]**

- 17. Amend § 1416.203 as follows:
  - a. In paragraph (a)(2) introductory text, remove the word “Provide” and add the words “As of the date of the qualifying drought or fire provide” in its place; and

b. In paragraph (a)(2)(i), add the words “the specific forage crop acreage in” after the word “for”.

18. Amend § 1416.204 as follows:

- a. In paragraph (a)(5), remove the word “any” and add the words “consumption by the owner, lessee, or contract grower, any” in their place;
- b. Revise paragraph (c)(7); and
- c. In paragraph (c)(9), remove the words “as part of a farming operation” and add the words “any of the following or” before the word “recreational”.

The revision reads as follows:

**§ 1416.204 Covered livestock.**

\* \* \* \*

(c) \* \*

(7) Unweaned livestock or animals not meeting the definition of a grazing animal;

\* \* \* \*

**§ 1416.205 [Amended]**

19. Amend § 1416.205 in paragraph (b)(2) by removing the words “lack of water that is beyond the participant’s control” and adding the words “the lack of surface water as a result of a qualifying eligible drought condition” in their place.

20. Amend § 1416.206 as follows:

- a. Remove paragraph (a);
- b. Redesignate paragraphs (b) and (c) as (a) and (b), respectively;
- c. Revise newly redesignated paragraph (a);

- d. Remove newly redesignated paragraph (b)(2);
- e. Redesignate newly redesignated paragraphs (b)(3) through (7) as paragraphs (b)(2) through (6), respectively; and
  - e. In newly redesignated paragraph (b)(6), remove the words “papers; rendering truck receipts; Federal Emergency Management Agency Records; National Guard records; written” and add the words “papers; written” in their place.

The revision reads as follows:

**§1416.206 Application for payment.**

- (a) To apply for LFP, the participant that suffered eligible grazing losses for the 2019 and subsequent program years must submit a completed application and required supporting documentation, including some supporting documentation such as an acreage report that may have been required at an earlier date, to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

\* \* \* \*

**§ 1416.207 [Amended]**

- 21. Amend § 1416.207 in paragraph (a) by adding the words “representative to” after the words “only as” in the last sentence.

**Subpart D—Livestock Indemnity Program**

- 22. Amend § 1416.301 by revising paragraph (a) to read as follows:

**§ 1416.301 Applicability.**

- (a) This subpart establishes the terms and conditions of the Livestock Indemnity Program (LIP).

\* \* \* \*

23. Amend § 1416.302 as follows:

- a. Revise the definitions of “Actual livestock beginning inventory”, “Adjusted livestock beginning inventory”, and “Approved livestock beginning inventory”;
- b. In the definition of “Base period”, remove the words “open range calf or lambing operation” and add the words “unweaned livestock” in their place;
- c. In the definition of “Continuous livestock beginning inventory reports”, remove the words “livestock open range operation” and add the words “unweaned livestock” in their place;
- d. Remove the definition of “Cow/Ewe Livestock Beginning Inventory History”;
- e. Add in alphabetical order a definition for “Cow, Ewe, Nanny LBIH”;
- f. In the definition of “Eligible adverse weather”, remove the last three sentences;
- g. In the definition of “Eligible disease”, remove the word “poisoning”, and add the words “poisoning, or a disease that is caused or transmitted by a vector and cannot be controlled by vaccination or acceptable management practices” in its place;
- h. In the definition of “Livestock beginning inventory history”, remove the words “calf or lamb open range”;
  - i. In the definition of “LBIH reporting date”, add a period at the end of the definition;
  - j. Revise the definition of “Livestock inventory report”;
  - k. Remove the definitions of “Open range operation” and “Transitional livestock beginning inventory history for offspring (calves/lambs)”;

1. Add in alphabetical order definitions for “Transitional LBIH for unweaned livestock” and “Unweaned livestock”.

The revisions and additions read as follows:

**§ 1416.302 Definitions.**

\* \* \* \*

*Actual livestock beginning inventory* means the actual livestock beginning inventory per calendar year for unweaned livestock that is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales.

*Adjusted livestock beginning inventory* means the LBIH for unweaned livestock that will be adjusted during the base period for years for which continuous actual LBIH records are not provided.

\* \* \* \*

*Approved livestock beginning inventory* means the approved livestock beginning inventory for unweaned livestock, calculated by the sum of the yearly actual and transitional LBIH divided by the number of years of LBIH.

\* \* \* \*

*Cow, Ewe, Nanny LBIH* means, the applicable calendar year cow, ewe, or nanny verifiable livestock beginning inventory records provided to FSA by the unweaned livestock operation to be used in calculating the transitional LBIH.

\* \* \* \*

*Livestock inventory report* means a written record showing the producer's annual inventory used to determine the LBIH for LIP purposes for the livestock operation. The report contains LBIH by livestock operation by livestock type or kind.

\* \* \* \*

*Transitional LBIH for unweaned livestock* means an estimated LBIH, generally determined by multiplying the livestock operation's beginning cow, ewe, or nanny LBIH by the national established birthing rate percentage established by FSA for the species of unweaned livestock. The Deputy Administrator has the authority to make adjustments for variations in stocking levels for livestock during the period covered by the history as necessary. It is to be used in the transitional LBIH calculation process when less than 4 consecutive calendar years of actual LBIH is available.

*Unweaned livestock* means an animal not weaned from mother's milk or milk replacement to other nourishment. For LIP purposes, unweaned livestock does not include turkeys, ducks, chickens, and geese.

\* \* \* \*

24. Amend § 1416.304 as follows:

- a. Revise paragraphs (c)(1)(ii) and (c)(2);
- b. In paragraph (c)(3), add the words "produced or" before the word "maintained", and remove the words "sale of";
- c. Revise paragraph (c)(4);
- d. Redesignate paragraphs (d)(37) through (39) as paragraphs (d)(40) through (42), respectively and Redesignate paragraphs (d)(14) through (36) as paragraphs (d)(16) through (38), respectively;
- e. Add new paragraphs (d)(14) and (15);
- f. In newly redesignated paragraph (d)(36), remove the word "feeder" and add the words "suckling pigs, nursery" in their place;

- g. In newly redesignated paragraph (d)(37), remove the words “sows, boars,” and add “lightweight” in their place;
- h. In newly redesignated paragraph (d)(38), remove the words “over 150” and add the words “151 to 450” in their place;
- i. Add new paragraph (d)(39);
- j. Revise paragraph (e); and
- k. In paragraph (f), remove the words “cause of loss” and add the words “loss condition” in their place.

The additions and revisions read as follows:

**§ 1416.304 Eligible livestock.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

- (ii) No later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible loss condition; or
  - (2) Been injured and sold at a reduced price as a direct result of an eligible adverse weather event or eligible attack no later than 30 calendar days for livestock, or 7 calendar days for newborn livestock, from the ending date of the eligible adverse weather event or eligible attack.

\* \* \* \* \*

- (4) Not be produced or maintained for reasons other than commercial use for livestock sale or for the production of livestock products such as milk or eggs. Livestock excluded from being eligible include, but are not limited to, wild free roaming animals

and animals produced or maintained for consumption by the owner or contract grower, livestock used for recreational purposes, livestock used for pleasure, hunting, roping, pets, or for show.

(d) \* \* \*

(14) Chickens, roasters

(15) Chickens, super roasters or parts

\* \* \* \*

(39) Swine, boars, sows, 450 pounds or more;

\* \* \* \*

(e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Chickens, broilers, pullets (regular size);

(2) Chickens, chicks;

(3) Chickens, layers;

(4) Chickens, pullets or Cornish hens (small size);

(5) Chickens, roasters;

(6) Chickens, super roasters or parts;

(7) Ducks;

(8) Ducks, ducklings;

- (9) Geese, goose;
- (10) Swine, boars, sows;
- (11) Swine, suckling nursery pigs;
- (12) Swine, lightweight barrows, gilts 50 to 150 pounds;
- (13) Swine, sows, boars, barrows, gilts 151 to 450 pounds;
- (14) Swine, boars and sows 450 pounds or more;
- (15) Turkeys, poultts; and
- (16) Turkeys, toms, fryers, and roasters.

\* \* \* \*

25. Amend § 1416.305 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b)(1), remove the words “For 2017 and subsequent programs years, provide” and add the word “Provide” in its place and;
- c. In paragraph (b)(2), remove the words “paragraph (b)(1) of”;
- d. Revise paragraph (c);
- e. In paragraph (d)(4), remove the word “Inventory”, and add the words “Documentation acceptable to FSA showing inventory” in its place;
- f. Revise paragraphs (f), (g) introductory text, and (h) introductory text;
- g. In paragraph (h)(1)(i), remove the words “verifiable or reliable”;
- h. Revise paragraphs (i) introductory text and (i)(1) introductory text;
- i. In paragraph (i)(1)(i), remove the words “open range” and “verifiable”;
- j. In paragraphs (i)(1)(ii), (i)(2) introductory text, and (i)(2)(i), remove the words “open range” and add the word “unweaned” in their place;

- k. Revise paragraph (i)(2)(ii);
  - l. In paragraph (i)(3), remove the words “livestock beginning inventory history” and add the word “LBIH” in their places each time they appear; and remove the words “ewe and cow” and add the words “ewe, cow, and nanny” in their place;
  - m. In paragraph (i)(4) introductory text, remove the words “open range” and add the word “unweaned” in their place, and remove the words “livestock beginning inventory history” and add the word “LBIH” in their place;
  - n. Revise paragraphs (i)(4)(i) through (iv); and
  - o. Remove paragraph (k).

The revisions read as follows:

**§ 1416.305 Application process.**

(a) A notice of loss must be accompanied by documentation acceptable to FSA substantiating that the claimed eligible loss condition occurred and was responsible for eligible losses. For any notice of loss being submitted for disease exacerbated by eligible adverse weather, the notice of loss must be accompanied by a certification referenced in paragraph (g) of this section.

\* \* \* \*

(c) In addition to the notice of loss required in paragraph (b) of this section, a participant must also submit a completed application for payment, by livestock unit for losses apparent in 2019 and subsequent years, by no later than 60 calendar days after the end of the calendar year in which the eligible loss condition occurred.

\* \* \* \*

(f) For losses resulting from an eligible adverse weather event or eligible disease, if adequate verifiable proof of death or injury documentation is not available, the participant may provide reliable records as proof of death or injury. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(g) For livestock death losses due to disease, a licensed veterinarian's certification of livestock deaths may be accepted as proof of death, if reliable beginning inventory data is available, only if the veterinarian provides a written statement containing all of the following:

\* \* \* \*

(h) Certification of livestock deaths or injuries by third parties may be accepted if both of the following conditions are met:

\* \* \* \*

(i) \*

(2) \*

(ii) The COC will explain the procedure for the LBIH to unweaned livestock operation. COC will determine the LBIH in accordance with §1416.305(g).

\* \* \* \*

(4) \*

(i) If no acceptable livestock beginning inventory records are available for calves, lambs, or kids, calculate the 4 transitional livestock beginning inventory histories by

multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 65 percent.

(ii) If acceptable livestock beginning inventory records are provided for only one of the most recent 5 calendar years, calculate the 3 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 80 percent.

(iii) If acceptable livestock beginning inventory records are provided for only 2 of the most recent 5 calendar years, calculate the 2 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 90 percent.

(iv) If acceptable livestock beginning inventory records are provided for only 3 of the most recent 5 calendar years, calculate the one transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the unweaned livestock operation times the applicable cow, ewe, or nanny LBIH times 100 percent.

\* \* \* \*

## **Subpart E—Tree Assistance Program**

### **§ 1416.400 [Amended]**

26. Amend § 1416.400 in paragraph (a) by removing the words “by the Bipartisan Budget Act of 2018 (Pub. L. 115-123), and the Consolidated Appropriations Act, 2018 (Pub. L. 115-141)”.

27. Amend § 1416.402 by adding in alphabetical order a definition for “Commercially viable” and revising the definition of “Natural disaster” to read as follows:

**§1416.402 Definitions.**

\* \* \* \*

*Commercially viable* means an eligible tree, bush, or vine, though damaged, that can rejuvenate and return to an acceptable level of commercial production at some time with rehabilitation and without replanting. A commercially viable tree, bush, or vine, regardless of the extent of damage or years of reduced production, is always excluded and never included as part of mortality under § 1416.403.

\* \* \* \*

*Natural disaster* means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence. Each of these types of disasters must be extreme, abnormal, and damaging as well as of significant magnitude or severity, as determined by the Deputy Administrator.

\* \* \* \*

28. Amend § 1416.403 in paragraph (g) by adding two sentences to the end to read as follows:

**§ 1416.403 Eligible losses.**

\* \* \* \*

(g) \* \* \* The qualifying mortality loss will be determined based on the eligible trees, bushes, or vines that reached mortality, which means that the tree, bush, or vine died, above and below ground, as a result of an eligible natural disaster event. If an eligible

tree, bush, or vine is damaged to such an extent that it is not commercially viable, now or at any time in the future, the tree, bush, or vine can be considered dead in determining if the requisite qualifying mortality loss threshold in paragraph (a) of this section is reached.

**§ 1416.404 [Amended]**

29. Amend § 1416.404 in paragraph (a)(2) by removing the words “occurring on or after October 1, 2011”.

**§ 1416.405 [Amended]**

30. Amend § 1416.405 as follows:

- a. Remove paragraph (a);
- b. Redesignate paragraphs (b) through (e) as paragraphs (a) through (d), respectively; and
- c. In newly redesignated paragraph (a), remove the words “that occurred during the 2017 and subsequent calendar years” and remove the words “by the later of December 3, 2018”.

**§ 1416.406 [Amended]**

31. Amend § 1416.406 as follows:

- a. In paragraphs (a)(1)(i) and (a)(2)(i), add the words “for eligible producers, or 75 percent of the actual cost of the practice for an eligible producer who is a beginning or veteran farmer or rancher” after the word “practice”;

b. In paragraph (j), remove the words “occurred on or after October 1, 2011, can not” and add the word “cannot” in their place.

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[FR Doc. 2020-03841 Filed: 2/25/2020 8:45 am; Publication Date: 2/26/2020]